IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:06/10/2004

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MRS. JUSTICE PRABHA SRIDEVAN

WRIT PETITION NO.8850 OF 1999

1. K.C.A.D.Gnanagiri
2. T.L. Veerakumar
3. S. Dhanapalan
4. K. Chidambaram
5. N. Nandagopalan
6. A. Chakkaravarthi
7. G. Rajan Babu
8. M. Pattaiyan
9. Bellie Bojan
10. R. Parimanam
11. M.V. Ramachandran
12. Mohamed Sirajudeen Meera .. Petitioners

-Vs-

1. The State of Tamil Nadu,
rep. by the Secretary to Govt.,
Home Department,
Fort St. George,
Chennai 600 009.

2. The Registrar,
Tamil Nadu State Administrative Tribunal,
Chennai 600 010.

3. V.P. Rathinasenan
Prosecutor for Disciplinary Proceedings
Office of the Deputy Superintendent
of Police,
Vigilance and Anti Corruption
Vellore

4. M.N. Balasubramanian,
Legal Adviser,
Office of the Drug Controller,
D.M.S. Compound, Madras.

5. Abdul Aziz,
Assistant Public Prosecutor Gr.I,
Addl. Chief Metropolitan
Magistrate Court, Egmore,
Chennai 600 008.

6. Nandakumar,
Assistant Public Prosecutor Gr.I,
XII Metropolitan Magistrate Court,
Kelleys, Madras.

7. S. Venkatraman
Assistant Public Prosecutor,
XI Metropolitan Magistrate Court,
Saidapet, Chennai 600 015.

8. D. Amalathithan,
Legal Adviser to
Director of Agriculture, Ezhilagam,
Chennai. .. Respondents

Petition filed under Article 226 of the Constitution of India for
the issuance of Writ of Certiorarified Mandamus as stated therein.

For Petitioners : Mr.N. Anand Venkatesh

For Respondent-1 : Mr.S.V. Duraisolaimalai
Govt. Advocate
Respondents 3-4 : Mr. Vijayakumar

Respondent-7 : Mr.D. Shanmugham

:O R D E R

(The order of the court was made by P.K. MISRA, J)

Heard the learned counsels appearing for the parties.

2. The facts giving rise to the present writ petition are as follows :-

Prior to 17.11.1984, the Assistant Public Prosecutors in the State were functioning in two separate units. The post of Assistant Public Prosecutors in mofussil were governed by the Special Rules in Class XLIX of the Tamil Nadu General Service, whereas the Assistant Public Prosecutors in Madras City were governed by Class XXXIV of the Tamil Nadu Government Service. The Government decided that both the Units should be integrated and accordingly orders were issued in G.O.Ms. No,.2603 Home dated 17.11.1984 integrating the Assistant Public Prosecutors in Madras City and in Mofussil as one unit and framed common Special Rules in Class XLIX. In the aforesaid G.O., the seniority was fixed with reference to the date of appointment in the

Category of Assistant Public Prosecutors Gr.II and accordingly the Government by letter No.15560A/Courts VI/ 86-6 dated 4.8.1986 a Provisional Seniority List of Gr.I and Gr.II Assistant Public Prosecutors was published. At that stage, the present respondents 3 & 4 challenged the above Provisional Seniority List in W.P.No.8394 of 1988. such writ petition was transferred to the Tribunal and renumbered as T.A.No.326 of 199 4. Similarly, W.P.No.3552 of 1985 was filed challenging such seniority list, which was subsequently transferred and renumbered as T.A.No.32 5 of 1994.

3. The Tribunal on consideration of the relevant facts and circumstances, disposed of both the applications with the following directions :-

32. With the above observations, T.A.325/94 and T.A.326/94 are ordered as follows :-

The respondents are directed to prepare and publish the seniority list of All Assistant Public Prosecutors Grade-I and II for the State of Tamil Nadu, taking into account the following directions:-

(i) The Assistant Public Prosecutor Grade-I (Metro) appointed before the issuance of G.O.Ms.No.2603, Home, dated 17.11.84 shall be placed higher in seniority than Assistant Public Prosecutor-I in the Mofussil.

(ii) Assistant Public Prosecutor Grade-II (Metro) appointed before the issuance of G.O.Ms.No.2603, Home, dated 17.11.84 shall be placed below Assistant Public Prosecutor-I in the Mofussil in seniority.

(iii) Assistant Public Prosecutor Grade-II (Metro) appointed before the issuance of G.O.Ms.No.2603, Home, dated 17.11.84 shall be placed above Assistant Public Prosecutor-II in the Mofusill in seniority.

(iv) The seniority of Assistant Public Prosecutor Grade-I and Assistant Public Prosecutor Grade-I appointed after the issuance of G.O. Ms.No.2603, Home, dated 17.11.84 shall be in accordance with the dates of their regular appointment in their respective posts. Time 4 months.

4. On the basis of the aforesaid directions of the Tribunal, the Government subsequently prepared a seniority list of Assistant Public Prosecutor Grade-I and Assistant Public Prosecutor Grade-II.

5. The grievance of the present petitioners is that though such petitioners were beneficiaries of G.O.MS.No.2603 dated 17.11.1984, they had not been impleaded as parties in the litigations before the Tribunal and by virtue of the subsequent order passed by the Government, their seniority in the Graduation List has been adversely affected. It is their contention that since they were necessary parties and had not been impleaded, the Transferred Applications should have been rejected by the Tribunal. It is further contended that since the Government had decided to merge two units under G.O.Ms.No.2603 dated 17.11.1984, there was no necessity nor any justification for the Tribunal to give preference to the Assistant Public Prosecutors appointed in the Metro.

6. The Tribunal has traced in detail the history relating to the two Units and has rightly observed that the experience at the bar required for appointment as Assistant Public Prosecutor in the Mofussil was lower than the experience required for appointment as Assistant Public Prosecutor in the

city of Madras. The Tribunal also referred to the fact that before unification, the scale of pay payable to the Assistant Public Prosecutor in the city of Madras was higher as compared to the scale of pay payable to the Assistant Public Prosecutor in the Mofussil. Keeping in view these two important aspects, the Tribunal came to the conclusion that while unifying the two units, the seniority should not have been fixed on the basis of appointment alone and the Assistant Public Prosecutors in Metro should have been given weightage or preference.

7. From the unchallenged materials, it is apparent that for the post of the Assistant Public Prosecutor Grade-I in Metro, one was required to have experience as an Advocate for a period of 10 years, whereas for the Assistant Public Prosecutor Grade-I in Mofussil, the requisite experience was 5 years experience and similarly for the post of the Assistant Public Prosecutor Grade-II in Metro, the experience required was 5 years, whereas for such Assistant Public Prosecutor Grade-II in Mofussil, experience required was two years. The Tribunal rightly came to the conclusion that when both the categories were integrated, the aforesaid significant factor should not have been lost sight of. Keeping in view the aforesaid aspect and also the fact that the Assistant Public Prosecutors in Chennai were receiving higher salary, the directions, which have already been extracted were issued by the Tribunal with enough justification.

8. The contention of the learned counsel for the petitioners that the petitioners should have been impleaded as parties in the litigations before the Tribunal even though attractive on the face of it, is not acceptable. Essentially, the policy of the Government in unifying the two units without giving proper attention to the principle relating to weightage or seniority was the question before the Tribunal. The State Government which had issued the G.O. was made as a respondent. The policy of the State Government was found defective, and therefore, a direction was given for rectifying such defects in the manner indicated by the Tribunal. In such peculiar circumstances, the order of the Tribunal cannot be said to be illegal merely on account of the fact that the present petitioners were not specifically impleaded.

9. Learned counsel for the petitioner has also contended that the G.O.Ms.No.2603 dated 17.11.1984 having not been specifically challenged, the Tribunal should not have passed an order virtually modifying the G.O.. Even though there was no specific prayer for quashing the G.O., or modifying the G.O., the anomalous situation created by the G.O., was the main subject matter before the Tribunal and the order of the Tribunal cannot be said to be illegal or arbitrary, merely on the basis of such technical submission, particularly when the order passed by the Tribunal appears to be very fair and reasonable, keeping in view the background and the historical perspective.

10. Learned counsel for the petitioners has further contended that the order of the Tribunal should have been brought to the knowledge of all the persons and after giving them opportunity, the seniority list should have been prepared, more particularly when the previous provisional list has been circulated. This grievance of the petitioners can be mitigated by giving

opportunity to the petitioners or any other persons affected by the subsequent seniority list to make suitable representation and if any such representation is made, the same should be considered keeping in view the guidelines indicated in the directions given by the Tribunal.

11. As a result, while upholding the decision of the Tribunal, we make it clear that it would be open to the petitioners or any other aggrieved persons to make representation regarding the seniority as published in Annexure-I to G.O.Ms.No.615 Home dated 26.5.1998 and in case such representation would be received by the authorities, such representation may be considered in the light of the directions given by the Tribunal as contained in paragraph 32 of the order.

12. Subject to the aforesaid observation, the writ petition is dismissed. No costs.

Index : Yes

Internet: Yes

dpk

To

1. The State of Tamil Nadu,
rep. by the Secretary to Govt.,
Home Department,
Fort St. George,
Chennai 600 009.

2. The Registrar,
Tamil Nadu State Administrative Tribunal,
Chennai 600 010.